

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

STEVE SMITH, #00320168,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

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Case No. 6:19-cv-400-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner Steve Smith, formerly a Texas Department of Criminal Justice inmate, proceeding pro se, filed this habeas action. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for the disposition of the case.


On March 24, 2022, Judge Mitchell issued a Report recommending that the Court dismiss this habeas petition without prejudice for Petitioner's failure to comply with an order of the Court. Docket No. 6. Specifically, Petitioner failed to pay the requisite \$5.00 filing fee after his motion to proceed in forma pauperis was denied. A copy of this Report was sent to Petitioner at his last-known address with an acknowledgment card. The docket reflects that the mail was returned as undeliverable, with a notation that Petitioner was discharged. Docket No. 7. To date, Petitioner has not filed objections and has not otherwise communicated with the Court.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Petitioner has not objected, and his failure to communicate with the Court since September 2019 evidences a failure to prosecute his case. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 6) as the findings of this Court. This petition for habeas corpus is hereby **DENIED** and this action is **DISMISSED** without prejudice for failure to comply with a Court order and failure to prosecute. The Court **DENIES** a certificate of appealability, though Petitioner may refile his petition based on the same claims.

So **ORDERED** and **SIGNED** this **14th** day of **April, 2022**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE